IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7894 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMUL OIL PRODUCTS

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 7894 of 1995

MR VIJAY H PATEL for Petitioner No. 1

MR KL PANDYA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner has challenged the order of the Deputy Secretary, Food and Civil Supplies Department,

Govt. of Gujarat, dated 10th November 1994 whereby the Deputy Secretary has reviewed his own order dated 1st August 1994.

2. The short facts of the case are as under:

2.1 The petitioner's premises was inspected by the Assistant Collector, Bhavnagar on 22nd October 1991 and a stock of 300 pack tins of groundnut oil and truck bearing No.GTX 5564 was intercepted as certain irregularities were found suspicious by the Collector. Therefore, a show cause notice was issued on 28th November 1991. The petitioner filed its reply on 24th December 1991 and by order dated 26th December 1991, the Collector, Bhavnagar has passed an order of seizure of the stock of goods valued at Rs.1,85,125/- and also the truck valued at Rs.1,50,000/-.

2.2 Against the said decision of the Collector, Bhavnagar, the petitioner preferred Revision Application No. 83 of 1992 before the State Government which was partly allowed by the Deputy Secretary, by order dated 1st August 1994 whereby the said order was modified and 50% of the goods worth Rs.1,85,125/- was confiscated and released the balance amount of the goods.

2.3 The Deputy Secretary, without issuing notice or without hearing the petitioner, has modified the order and ordered that 50% of the value of the Truck, i.e. Rs.75,000/- to be recovered against confiscation order of truck.

3. I have heard learned Advocate for the petitioner and Mr.K.L.Pandya, learned AGP for the respondents.

4. When the matter was first called out on 29th March 2004, on the request of learned AGP appearing for the respondents, the matter was adjourned to 31st March 2004 to verify as to whether the State Government could have reviewed its own order dated 1st August 1994 without issuing notice to the petitioner and without jurisdiction. When the matter was called out on 31st March 2004, learned AGP Mr.Pandya requested that the matter may be adjourned to 1st April 2004, i.e. today since the Officer was not available and could not come to the Court. Even today, when the matter was called out at 11.00 a.m., Mr.Pandya requested to keep this matter at 2.15 p.m. and the matter was called out at about 3.15 p.m. But, the Officer has not remained present inspite of giving sufficient notice to explain how he can review his own order dated 1st August 1994.

5. Mr.Pandya submitted that the by reviewing the order, the petitioner is benefitted and therefore, he could not have made any grievance regarding review of the order. But, when a specific query was put to him under which provision of law, the Deputy Secretary could review his own order, learned AGP Mr.Pandya is not in a position to justify the order of the Deputy Secretary.

6. The question is whether the Deputy Secretary has any power to review his own order without issuing notice to the affected party or not. In the present case, admittedly, the officer has not issued notice to the petitioner and has modified the order dated 1st August 1994 and enhanced the penalty of Rs.75,000/- i.e. 50% value of confiscated truck valued at Rs.1,50,000/- which was set aside, that too, without issuing notice to the petitioner. Therefore, the order dated 10th November 1994 passed by the Deputy Secretary is in clear violation of the principles of natural justice and without jurisdiction. Hence, the said order dated 10th November 1994 is required to be quashed and set aside and the order dated 1st August 1994 is required to be confirmed.

7. In the result, the petition is allowed. The order dated 10th November 1994 passed by the Deputy Secretary is quashed and set aside and the order dated 1st August 1994 is confirmed. Rule is made absolute. No order as to costs.

If the amount of Rs.75,000/- is deposited by the petitioner, the same may be refunded to the petitioner.

(K.S. Jhaveri, J.)

Sreeram.